



**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2013-UNAT-284

**Charles  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

**JUDGMENT**

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Before:	Judge Inés Weinberg de Roca, Presiding Judge Luis María Simón Judge Richard Lussick
Case No.:	2012-310
Date:	28 March 2013
Registrar:	Weicheng Lin

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Counsel for Appellant:	Self-represented
Counsel for Respondent:	Amy Wood

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal filed by Mr. Lestrade Charles against Judgment No. UNDT/2012/021, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in New York on 10 February 2012 in the case of *Charles v. Secretary-General of the United Nations*. Mr. Charles appealed on 27 March 2012, and the Secretary-General answered on 4 June 2012.

### **Facts and Procedure**

2. On 23 August 2010, Mr. Charles, a P-3 level staff member in the Procurement Division (PD), Office of Central Support Service, Department of Management, applied for a P-4 position of Procurement Officer in his Division, advertised under vacancy announcement 10-PRO-OFC OF Central Support Service-15389-R New York (G).

3. The vacancy announcement for the post indicated: “A minimum of seven years of progressively responsible experience in managing procurement and contracting activities and delivering complex contracts is required. Experience in procurement of financial service is desirable.” In completing his online application, however, Mr. Charles responded in the negative to the following two pre-screening questions:

- “Do you have 7 years of experience in high-volume procurement operations?”
- “Have you managed the procurement activities of a discrete unit in an organization at the international level?”

4. Mr. Charles’ application was one of 34 released to the hiring manager as a “long list” from the Office of Human Resources Management (OHRM). He was not, however, on the “short list” of candidates compiled by the hiring manager. The latter had shortlisted six individuals, all of whom were rostered candidates.

5. Mr. Charles was notified that his application had not been successful on 7 February 2011. Thereafter, on 11 March 2011, he requested management evaluation of this decision. In the course of the management evaluation process, the PD advised the Management Evaluation Unit (MEU) that whilst Mr. Charles had almost 12 years’ experience with the Organization, he had served less than three years as a Procurement Officer and, accordingly, he had not met the work experience requirements of the post. On 8 April 2011, Mr. Charles was notified that the selection decision was maintained, the MEU having determined that it was properly taken.

6. Mr. Charles appealed this decision to the Dispute Tribunal on 20 May 2011, requesting documentary evidence of the evaluation of his candidature and contending that his rights had been violated in the selection process. Specifically, he asserted that years of experience should be only one factor in evaluating candidates; job applicants are required to satisfy only 80 per cent of the pre-screening questions to warrant further consideration; and, that he had sufficient work experience for the post. He alleged that the fact that only rostered candidates were short-listed for the post was evidence that the selection process had been manipulated.

7. In its Judgment No. UNDT/2012/021, the UNDT recalled that the contested selection exercise was governed by administrative instruction ST/AI/2010/3, "Staff selection system". It noted that Mr. Charles' candidature had been released to the hiring manager, following the pre-screening conducted by OHRM, thereby disproving his claims that procedural error(s) impacted the proper pre-screening of his application. OHRM had released pre-screened as well as rostered candidates to the hiring manager but, pursuant to Section 7.4 of ST/AI/2010/3, the hiring manager was only required to further evaluate those candidates that he short-listed. Mr. Charles' argument that the hiring manager had procedurally erred by not evaluating all released candidates was, thus, found to be incorrect. The UNDT recalled that the Respondent was still under the obligation "to be in a position to justify its decisions at all times to ensure they are fair and just and not arbitrary" but held that it had met this burden when the hiring manager provided an explanation during the management evaluation process.

8. The Dispute Tribunal observed that "one of the characteristics of the United Nations selection process is the use of objective criteria (such as ... years of experience)" and found that "this objective and quantifiable approach ... reduces the risk of decision-makers reaching subjective and possibly unfair comparisons of candidates' suitability". In the instant case, the criteria had been objectively applied. The UNDT perceived, however, that Mr. Charles sought the Tribunal's intervention in the assessment of his work experience, *per se*, and recalled it had "neither the power nor the ability to make such an assessment and substitute its assessment for that of the Respondent".

9. The UNDT found that Mr. Charles had been fully and fairly considered for the post; that he had submitted no evidence to support his claim of bias; and, that his application had no merit. Accordingly, it dismissed the application in its entirety.

## **Submissions**

### **Mr. Charles' Appeal**

10. Mr. Charles acknowledges “[t]here is no issue in this case with the exercise of the Respondent’s final selection decision”, but claims, “I have always had a legitimate expectation, if not of being selected but at least of being fully and fairly evaluated and considered”.

11. He asserts that the UNDT erred in finding that his candidature was fully and fairly considered and that the selection process was not abused or legally flawed.

12. He contends that the Organization had “a duty to observe [his] due process rights and ... [to] compl[y] with the rules on staff selection process”, and that it “did not adduce any evidence to show that [his] candidature was evaluated at the relevant time”.

13. Mr. Charles further contends that the Dispute Tribunal erred in finding that the Respondent was not required to document the reasons for the decision to eliminate him from the selection process or to notify him of said decision.

14. He requests the Appeals Tribunal to reverse the UNDT Judgment and award “reasonable compensation for the loss of career advancement opportunity” and for the “tremendous emotional and psychological stress, pain and anxiety suffered”.

### **Secretary-General's Answer**

15. The Secretary-General submits that Mr. Charles has alleged no error on the part of the Dispute Tribunal that would warrant reversal of its Judgment.

16. The Secretary-General further submits that the UNDT properly determined that his candidacy was fully and fairly assessed.

17. The Secretary-General objects to the inclusion of arguments regarding improper documentation in the appeal to this Tribunal, which were not raised before the UNDT.

18. The Secretary-General contends that Mr. Charles has alleged no basis to support his requested award of compensation.

19. The Secretary-General requests the Appeals Tribunal to affirm the Judgment of the UNDT, and to dismiss the appeal in its entirety.

### **Considerations**

20. Mr. Charles was not selected for the position advertised on 13 August 2010 under vacancy announcement 10-PRO-OFC OF Central Support Service-15389-R New York (G).

21. When responding to the ten pre-screening questions for the post included on the online United Nations jobsite, he responded “no” to having seven years of experience in high-volume procurement operations and to management of procurement activities of a discrete unit in an international organization.

22. In spite of these two negative answers, his application was released with 33 others to the hiring manager. The hiring manager short-listed six rostered candidates for the post, but Mr. Charles was not among them. On 7 February 2011, he was informed that his application was unsuccessful.

23. The UNDT decided on 10 February 2012 that the hiring manager did not commit a procedural error in not evaluating all the candidates.

24. The hiring manager took into account that, at the time of the job application, Mr. Charles did not meet objective criteria, *i.e.*, seven years’ experience in managing procurement and contracting activities and delivering complex contracts. Objective criteria reduce the risk of subjective and unfair comparisons.<sup>1</sup>

25. The Administration was in a position to justify its decisions as not arbitrary and Mr. Charles failed to meet his burden of proving the alleged discrimination.<sup>2</sup>

26. The appeal expresses disagreement with the Judgment and repeats arguments already thoroughly considered and rejected by the UNDT. There are no new arguments and the appeal is an attempt to have a hearing *de novo* of the application, which is not the function of this Court.

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<sup>1</sup> Judgment No. UNDT/2012/021, para. 27.

<sup>2</sup> See *Azzouni v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-081.

As held in *Ilic*,

[w]hen the Appeals Tribunal hears an appeal, it does not simply re-try the case. The function of the Appeals Tribunal is to determine if the Dispute Tribunal has made errors of fact or law, exceeded its jurisdiction or competence, or failed to exercise its jurisdiction, as prescribed in Article 2(1) of the Statute. The appellant has the burden of satisfying the Appeals Tribunal that the judgment rendered by the Dispute Tribunal is defective. It follows that the appellant must identify the alleged defects in the judgment and state the grounds relied upon in asserting that the judgment is defective. It is not sufficient for an appellant to state that he or she disagrees with the outcome of the case or repeat the arguments submitted before the Dispute Tribunal.<sup>3</sup>

27. For these reasons, Mr. Charles' appeal is rejected.

**Judgment**

28. The appeal is dismissed.

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<sup>3</sup> *Ilic v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-051, para. 29.

Original and Authoritative Version: English

Dated this 28<sup>th</sup> day of March 2013 in New York, United States.

*(Signed)*

Judge Weinberg de Roca,  
Presiding

*(Signed)*

Judge Simón

*(Signed)*

Judge Lussick

Entered in the Register on this 24<sup>th</sup> day of May 2013 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar